

January 25, 2010

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Attention: Wireless Telecommunications Bureau

Re: Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement; Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement; Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations; Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership; WT Docket Nos. 09-104, 09-119, 09-121;
Written Ex Parte Communication

Dear Ms. Dortch,

Telephone USA Investments, Inc. ("Telephone USA"), by its counsel, hereby submits this written ex parte communication in WT Docket Nos. 09-104, 09-119 and 09-121.¹ By this letter, Telephone USA responds to the redacted public inspection copy of the response of Cellco Partnership d/b/a Verizon Wireless ("Verizon") to the Wireless Telecommunications Bureau's November 19, 2009 letter in WT Docket No. 09-104.² This response is based on the redacted submission because Verizon has refused to provide access to the full response.³

¹ The Commission declared that these proceedings would be governed by permit-but-disclose *ex parte* procedures. See AT&T and Cellco Partnership D/B/A Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, *Public Notice*, 24 FCC Rcd 8171 (2009); Cellco Partnership D/B/A Verizon Wireless and AT&T Inc. Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, *Public Notice*, 24 FCC Rcd 11314 (2009); Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations, *Public Notice*, 24 FCC Rcd 9035 (2009).

² It appears that Verizon has not yet responded to the Bureau's similar letter in WT Docket No. 09-121. Telephone USA received access to Verizon's response in WT Docket No. 09-119.

³ Verizon's full response is protected by a First Protective Order and a Second Protective Order. See Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses

Review of the redacted copy of Verizon's response, however, confirms the arguments made by Telephone USA in its Petition to Deny in WT Docket No. 09-119 and subsequent *ex parte* communications in WT Dockets 09-104, 09-119, and 09-121.⁴ Telephone USA submits therefore, that the proposed transactions cannot be approved without a full Commission hearing or comparable procedure that permits full, not redacted, review of Verizon's actions and statements subsequent to its acquisition of the ALLTEL properties.

It is possible that Verizon submitted confidential or highly confidential information that responds to the analysis outlined above or that discusses Telephone USA's participation in the bidding process in ways that are not revealed in the public version of the submission.⁵ Telephone USA submits that it would be improper for the Commission to rely on such information without subjecting it to review by Telephone USA or other parties that actually participated in the bidding process; indeed, any explanation or information that Verizon refuses to make available to interested parties like Telephone USA should be considered unreliable in the absence of an opportunity for those parties to respond.

Background

Verizon claims that the proposed AT&T and Atlantic Tele-Network, Inc. transactions will allow it to meet the divestiture conditions of the *Alltel Merger Order*, for which reconsideration remains pending.⁶ That order explicitly encouraged Verizon to sell to "regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups" and admonished it to open its divestiture process.⁷

Telephone USA was an active participant in the bidding for the properties that Verizon was required to divest under the *Alltel Merger Order*, both prior to the announcement that most of the properties were to be sold to AT&T and, after that, until Verizon chose Atlantic Tele-Network, Inc. to receive the remaining licenses. Telephone USA falls within the category of entities – "businesses owned by minorities or socially disadvantaged groups" – that the Commission identified as appropriate buyers of the divestiture assets in the *Alltel Merger Order*.⁸

Verizon, however, responded to the Commission's expressed wishes in the *Alltel Merger Order* by ignoring them. Indeed, given Verizon's previous incomplete explanations of its lack of efforts to assist socially disadvantaged bidders, the Bureau requested further information from

and Authorizations and to Modify a Spectrum Leasing Arrangement, Protective Order, 24 FCC Rcd 13852 (2009); Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement, Second Protective Order, DA-09-2601 (2009). Verizon has objected to Telephone USA's acknowledgments of confidentiality.

⁴ Copies of the petition and Telephone USA's reply are attached to this letter and hereby incorporated by reference.

⁵ It is likely, in fact, that materials concerning Telephone USA are included in the confidential and highly confidential submissions because of Telephone USA's status as a bidder.

⁶ *Alltel Merger Order*, at 17518.

⁷ *Id.*

⁸ *Id.*

Verizon regarding participation by small and disadvantaged bidders in the divestiture process in its November 19, 2009 letters.

Verizon Failed to Assist Socially Disadvantaged Businesses

In its response to the Bureau's inquiry, Verizon again provides little evidence that it tried to reach out to minority buyers. The redacted public response instead shows that Verizon did nothing to improve the chances that a minority bidder would be successful.⁹ The decisions that mattered, especially the type of bids that Verizon would accept, disadvantaged minority buyers and effectively prevented Telephone USA or any other minority bidder from having any chance of success.

In its redacted public response, Verizon merely repeated previous statements that it made minor changes in "relaxing the bid timelines or other procedural requirements" for no more than four minority bidders out of a total of seventy bidders. Furthermore, Verizon conceded that its outreach to minority parties consisted only of asking the Executive Director of the Minority Media and Telecommunications Council for recommendations. According to Verizon, MMTC provided a grand total of two suggestions for minority candidates, both of which were already involved in the bidding process. Verizon's response makes clear that Verizon refused to go any further than these minimal efforts.

While Verizon claims it showed a willingness to bend on minor procedural issues, it failed to assist socially disadvantaged business in the most important area – financing. Peppered through the public inspection copy of the Verizon response one finds a multitude of references to "fully committed" and "full financed" bids. This requirement for a "fully committed" or "fully financed" bid (which was not imposed by the Commission, the Justice Department, or any other government agency) effectively shut out small and disadvantaged businesses from the divestiture process.

As the Commission long has recognized, the largest barrier for small and disadvantaged business in the communications marketplace is access to capital.¹⁰ A small or disadvantaged business must show financing institutions a transaction commitment before such institutions will finance a transaction. Verizon, however, decided that it would accept bids only from entities that allegedly already had tens of millions of dollars in financing firmly in place. Verizon therefore limited the pool of potentially successful bidders to established companies with easy access to capital by mandating "fully financed" or "fully committed" bids.

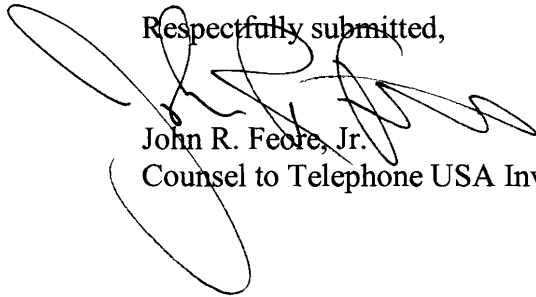
⁹ See Joint Opposition of AT&T, Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104 at 22-25.

¹⁰ See generally Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Fourth Further Notice of Proposed Rulemaking*, 24 FCC Rcd 5896 (2009).

Conclusion

Even Verizon's own redacted public response shows that Verizon had no intention of opening the divestiture process to small businesses, minorities, and other disadvantaged bidders. Instead, where it mattered – financing – Verizon decided to heavily favor established businesses with easy access to capital. Verizon failed to meet the intent of the *Alltel Merger Order*, and should not be rewarded for ignoring the Commission.

Respectfully submitted,



John R. Feore, Jr.

Counsel to Telephone USA Investments, Inc.

CC (via e-mail):

Ruth Milkman

Kathy Harris

Neil Dellar

ATTACHMENT

Telephone U.S.A. Investments, Inc.

Petition to Deny

Reply

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
)	
Atlantic Tele-Network, Inc.)	WT Docket No. 09-119
)	
and)	
)	
Verizon Wireless)	
)	
Applications for Consent to Assignment of)	
Licenses and Transfer of Control)	

FILED/ACCEPTED
AUG. 10 2009
Federal Communications Commission
Office of the Secretary

PETITION TO DENY OF TELEPHONE USA INVESTMENTS, INC.

Telephone USA Investments, Inc. ("Telephone USA"), by its attorneys and in accordance with the Commission's July 9, 2009 *Public Notice*, hereby submits this petition to deny the applications in the above-referenced proceeding.¹ Telephone USA submits that the Commission should deny these applications because Verizon Wireless wholly disregarded the Commission's intent that minority businesses be provided a realistic, fair and documented opportunity to purchase assets being divested to meet the conditions in the *Alltel Merger Order*.²

I. Introduction

Telephone USA is a minority-owned company that is one of the principal owners of Telephone USA of Wisconsin, a provider of local exchange, long distance and Internet service to more than 60,000 customers in 35 exchanges in rural Wisconsin. Telephone USA entered the telephone business in 2000 with the acquisition of these exchanges from GTE.

¹ See Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations, *Public Notice*, DA-09-1515 (2009).

² Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008) (the "*Alltel Merger Order*"), *reconsideration pending*.

Telephone USA was an active participant in the bidding for the properties that Verizon Wireless was required to divest under the *Alltel Merger Order*, both prior to the announcement that most of the properties were to be sold to AT&T and, after that, until Verizon Wireless chose Atlantic Tele-Network, Inc. (“ATNI”) to receive the remaining licenses. In fact, Telephone USA’s last bid for the licenses that are the subject of this proceeding was submitted just before midnight on June 8, 2009, the deadline set by Verizon Wireless, and just before ATNI announced that it had been selected on the morning of June 9.

Telephone USA is interested in this proceeding for several reasons. Most importantly Telephone USA falls within the category of entities – “businesses owned by minorities or socially disadvantaged groups” – that the Commission identified as appropriate buyers of the divestiture assets in the *Alltel Merger Order*.³ Verizon Wireless’s decision to ignore the Commission’s interests, as clearly defined in the *Alltel Merger Order*, injured Telephone USA by preventing it from having a reasonable opportunity to purchase the assets.⁴ Telephone USA is particularly concerned in this case because it appears that there may be no other meaningful future opportunities for minority-controlled businesses to enter the wireless business.

Telephone USA also is concerned about how Verizon Wireless conducted the sale of these licenses. As described below, there were irregularities that suggest that the decision to sell

³ *Id.*, 23 FCC Rcd at 17518.

⁴ The injury suffered by Telephone USA is distinguishable from the injuries considered by the Commission in the *NextWave* decision. In *NextWave*, the parties argued that they had standing because of actions that had taken place in other, unrelated proceedings, including the original auction for the NextWave licenses. Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, et al. to Cingular Wireless LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 2570, 2579-80 (2004). Here, the injury to Telephone USA, including the expenditure of millions of dollars, is a direct result of the Verizon Wireless actions that led to this proceeding, including the disregard of the Commission’s clear intent that Verizon Wireless take steps to protect minority bidders in the sale process for the licenses that are the subject of these applications.

to ATNI was pre-determined or influenced by factors other than what Verizon Wireless said was important. Together with Verizon Wireless's disregard for the Commission's wishes, these facts appear to taint the sale of these licenses and, at a minimum, raise questions of material fact that can be addressed only after a full Commission investigation and a hearing on the record.

II. Factual Background

Telephone USA participated in Verizon Wireless's sale process from the very start, and submitted a bid that met the initial deadline of December 24, 2008. Telephone USA was then informed that the deadline had been changed to April 30, 2009, and that bids that covered all of the properties to be divested were most likely to receive favorable consideration. Telephone USA met this deadline as well, this time with a bid for all of the properties. The amount of this bid exceeded what AT&T and ATNI are paying for the combined divestiture properties.

On May 8, Verizon Wireless announced that it was selling most of the affected markets to AT&T. It informed Telephone USA that it would accept bids for the remaining properties through the end of the day on June 8. As described above, Telephone USA submitted a timely bid for those remaining properties. This bid was approximately \$1 billion. Much to Telephone USA's surprise and with no notice or response from Verizon on its timely submitted bid with no contingencies, the next morning at 9:00 am on June 9, ATNI announced that the properties would be sold to ATNI for approximately \$200 million. This amount not only was about 20 percent of the amount bid by Telephone USA, but it was approximately one-sixth of the price per customer paid by AT&T for the other divested markets.

During the bidding process, Telephone USA discovered that Verizon Wireless did not follow its own announced bidding procedures consistently and apparently chose not to enforce those procedures if doing so would harm favored bidders. For instance, the bidding procedures letter stated that proposals that involved non-cash consideration or markets other than those

being divested would not be considered, but the Verizon Wireless-AT&T transactions involve, in effect, swapping non-divested markets. The Commission should investigate whether the “swap” between AT&T and Verizon Wireless includes properties from AT&T’s proposed acquisition of Centennial Communications, as AT&T announced its intent to sell Centennial properties to Verizon Wireless prior to AT&T’s actual acquisition or FCC approval of the transaction between AT&T and Centennial. If it does, then the bidding process with Telephone USA (and all others) was for show, and while Verizon was informing bidders that no contingencies would be entertained, it engaged in the two-part transaction with AT&T that involves properties that it does not yet own. Similarly, Verizon Wireless informed a member of Congress that it could not engage in separate negotiations with individual bidders because the divestiture was an auction, even though the bidding procedures letter stated that “Verizon Wireless retains the right to negotiate with any prospective purchaser or several purchasers at any time regardless of whether any such prospective purchaser has participated in the auction process.” In the end, the process clearly was not an auction, since Verizon Wireless agreed to sell the properties that are the subject of this proceeding for a price that was a small fraction of Telephone USA’s bid.⁵

⁵ Telephone USA also has discovered that the investment firm that conducted the bidding process for Verizon Wireless had a substantial ownership position in ATNI. This position, a total of more than 36,000 shares, included more than 20,000 shares that were purchased during the period when Verizon Wireless was negotiating the sale of the divested assets. See “Atlantic Tele-Network Inc. (ATNI),” Mutual Fund Facts About Individual Stocks, <http://www.mffais.com/atni> (last visited Aug. 10, 2009) (web page compiling purchases and sales of ATNI stock as reported to the SEC). The value of these shares increased more than 40 percent when the sale was announced. E. Savitz, “Atlantic Tele-Network Soars on Verizon Wireless Deal,” Barron’s Tech Trader Daily, June 10, 2009, <http://blogs.barrons.com/techtraderdaily/2009/06/10/atlantic-tele-network-soars-on-verizon-wireless-deal/> (last visited Aug. 10, 2009).

III. The Process Used by Verizon Wireless to Sell the Divestiture Assets Was Not Consistent with the Commission's Intentions in the *Alltel Merger Order*.

The *Alltel Merger Order* makes it clear that the Commission believed that the public interest would be advanced if Verizon Wireless took steps to sell the divestiture assets to companies that faced disadvantages in obtaining access to the wireless marketplace. The order explicitly encouraged Verizon Wireless to sell to “regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups[.]”⁶ The Commission included this language in light of its well-understood concerns about diversity in the telecommunications marketplace, and reinforced its intent by noting that “whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission’s consent to the transfer or assignment of the Divestiture Assets.”⁷

Verizon Wireless responded to the Commission’s expressed wishes by ignoring them. Verizon Wireless first tried to bundle all of the markets into a single package, which was certain to make it more difficult for smaller, minority-owned providers and new entrants to bid successfully. Then Verizon Wireless sold the bulk of the markets to a company that was unable to buy all of the divestiture assets because it is too big, and so ended up splitting the markets up anyway. To do this, it rejected a bid from Telephone USA that was larger than the total amount it ultimately agreed to take for the combined divestiture markets.

Meanwhile, Verizon Wireless repeatedly rejected entreaties from Telephone USA and others, including members of Congress, to engage in negotiations with minority-owned businesses. It did so by claiming that its procedures required a pure auction, even though those very procedures warned that Verizon Wireless could negotiate with anyone at any time. Finally,

⁶ *Alltel Merger Order*, 23 FCC Red at 17518.

⁷ *Id.*

once Verizon Wireless was forced to split up the divestiture assets, it rejected a bid from a minority buyer in favor of a bid from a non-minority company that will pay \$800 million less. In other words, Verizon Wireless took every opportunity it had to avoid selling to a minority buyer.

In the AT&T proceeding, Verizon Wireless has argued that it tried to reach out to minority buyers, but every step Verizon Wireless took did nothing to improve the chances that a minority bidder would be successful.⁸ The decisions that mattered, from the types of bids that Verizon Wireless favored to its unwillingness to negotiate directly with minority bidders to its ultimate decision to choose ATNI, all disadvantaged minority buyers and effectively prevented Telephone USA or any other minority bidder from having any chance of success.⁹

These facts demonstrate that Verizon Wireless's actions in the sale process are contrary to the public interest. The Commission clearly stated a goal for the divestiture process, and Verizon Wireless did not meet it. Verizon Wireless's less than transparent efforts to sell to its "favored" buyers and its disregard of the Commission's concerns is a strike against the applications that must be considered in the public interest analysis.

Moreover, there are no meaningful public interest benefits to the proposed transaction. ATNI has no experience providing retail wireless service in the United States, and so cannot claim that it will improve service to the customers in the divested markets. The divestiture itself, claimed as a public interest benefit in the applications, does not qualify because Verizon Wireless already is required to divest these assets. Similarly, the transition services to be made available to ATNI are not a benefit because all they will do is prevent customers from receiving

⁸ See Joint Opposition of AT&T, Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104 at 22-25.

⁹ Telephone USA notes that ATNI has characterized itself as a rural carrier. See FCC File Nos. 0003858521, *et al.*, Public Interest Statement at 1-2. However, the only rural services that it claims to provide are "voice and data wireless roaming services." ATNI's principal business is local telephone service in foreign countries and the U.S. Virgin Islands.

worse service than they receive already. Consequently, the evidence demonstrates that grant of these applications would not serve the public interest.

IV. The Sale Process Was Tainted.

As described above, Verizon Wireless's agent conducting the sale of the assets held an interest in ATNI throughout the sale process, and more than doubled that interest during the period prior to March 31. The announcement of the proposed sale to ATNI increased the value of that interest by more than 40 percent. These facts raise significant issues concerning the extent to which the sale process was affected by these interests and whether Verizon Wireless was influenced in its sale decision by the benefits its agent would accrue from a sale to ATNI.

The potential that the choice of buyer could have been influenced by factors other than those that should have been relevant to the decision is particularly significant in light of the Commission's expressed desire that Verizon Wireless seek out minority-owned buyers. As reflected in the impact on ATNI's stock price and financial commentary at the time the transaction was announced, this acquisition is widely viewed as a significant positive development for ATNI, not to mention a surprise. If nothing else, the acquisition would not have been viewed as favorably if ATNI had been required to pay a price that approached the amount that Telephone USA bid for the same properties.

In addition, there are significant questions about how Verizon Wireless approached the sale process as a whole. In particular, the interrelated nature of the Verizon Wireless-AT&T transactions, which amount to a swap of assets between the two largest wireless carriers that will consolidate their dominance of the market, should be troubling to the Commission.¹⁰ When this concern is combined with the timing of the announcement that ATNI was the selected buyer for

¹⁰ In fact, AT&T has agreed to sell assets to Verizon Wireless that AT&T does not yet own because the Centennial transaction remains pending. See WT Docket No. 08-246.

the remaining licenses – literally hours after the last bids were due, and Verizon Wireless's sale of the divested markets for a combined total that was less than what Telephone USA bid, the evidence suggests that, in fact, the entire bidding process could have been for show, with the winners predetermined.

These facts suggest strongly that the sale process could have been tainted by the ownership interests in ATNI and by Verizon's desire to sell to favored parties. While the Commission would not normally consider how a seller chose the buyer, questions about the integrity of the process are significant here because of the Commission's expressed interest in a sale to a minority or disadvantaged buyer. Thus, the Commission should be unwilling to grant the applications without a credible explanation for the choice of ATNI.

V. The Commission Must Designate the Verizon-ATNI Applications for Hearing Because the Parties Have Failed to Meet Their Burden of Demonstrating That the Transaction Would Serve the Public Interest.

To grant the applications, the Commission must determine whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then must weigh the public interest harms of the transaction against the potential benefits.¹¹ Verizon and ATNI bear the burden of proving that the proposed transaction serves the public interest.¹² If the Commission cannot affirmatively find that the proposed transaction serves the public interest or if the record presents a substantial and material question of fact, the Commission must designate

¹¹ See, e.g., AT&T and BellSouth Corporation, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 (2006).

¹² See, e.g., Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee), *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 (2002) (*"EchoStar/DirecTV Order"*).

the application for hearing.¹³ Verizon Wireless and ATNI have failed to carry their burden in the face of substantial evidence that this transaction would cause real public harm.¹⁴

As demonstrated above, the applicants have failed to show any meaningful public benefit from Verizon Wireless's proposed sale to ATNI. The purported "public interest" benefits of their transaction evaporate on analysis. On the other hand, the circumstances of this sale raise grave concerns about lasting public harm from allowing the transaction to proceed and more than establish a *prima facie* case that grant of the applications would not serve the public interest.

The Commission has held that its public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"¹⁵ which include, among other things, "a deeply rooted preference for preserving and enhancing competition in relevant markets . . . [and] ensuring a diversity of license holdings"¹⁶ Far from enhancing competition and diversity in the wireless marketplace, the proposed transaction is part of a set of transactions that would divide wireless markets into precisely delineated spheres of influence calculated to minimize competition and safeguard the dominant position of a few large carriers against the disruptive effect of new entrants. Moreover, the circumstances of these transactions, including the acknowledgment by Verizon Wireless that its bidding process included conditions that minority buyers were unlikely to meet, indicate that Verizon Wireless intends and welcomes that result.

¹³ See Applications for Consent to the Transfer of Control of Embarq Corporation, *Memorandum Opinion and Order*, FCC-09-54 at 6-7 (2009) ("*Embarq Order*"); see also Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12365-66 (2008) ("*XM/Sirius Order*").

¹⁴ See, e.g., General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 483 (2003); *EchoStar/DirecTV Order*, 17 FCC Rcd at 20574.

¹⁵ *XM/Sirius Order*, 23 FCC Rcd at 12365-66.

¹⁶ See *Embarq Order* at 6.

As in the *Echostar/DirecTV Order*, these facts require the Commission to designate these applications for hearing. In that case, the Commission found that “the bulk of the Applicant’s promised benefits . . . appear to be either inadequately supported by the data supplied; not merger-specific; achievable through means other [than the proposed transaction]; or . . . otherwise not cognizable under our public interest standard,” and that those benefits were counterbalanced by potential public interest harms.¹⁷ The same is true here: The benefits are, at most, minimal, unrelated to the proposed transaction and achievable through other means, while the harms, including the loss of what may be the last best chance to achieve greater diversity in the wireless business, are real and significant. Thus, consistent with the Commission’s prior decisions, these applications should be designated for hearing.

VI. Conclusion

For all these reasons, the Commission should deny the applications for the assignment of licenses and transfer of control from Verizon Wireless to ATNI.

Respectfully submitted,

TELEPHONE USA INVESTMENTS, INC.

John R. Feore
Joshua Pila

Its Attorneys

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August 10, 2009

¹⁷ *Echostar/DirecTV Order*, 17 FCC Rcd at 20664.

Exhibit 1

Declaration of Joseph Stroud

Declaration of Joseph Stroud

1. **My name is Joseph Stroud. I am the Chairman of Telephone USA Investments, Inc. ("Telephone USA"). I am submitting this declaration in connection with the petition to deny being filed by Telephone USA in response to the applications of Verizon Wireless and Atlantic Tele-Network, Inc. for authorization of the assignments and transfers of control of certain wireless licenses that are now held by Verizon Wireless to Atlantic Tele-Network. All of the information contained in this declaration is based on my personal knowledge.**
2. **Telephone USA is a minority-owned company that currently holds an interest in Telephone USA of Wisconsin, which provides local and long distance telephone service and Internet service to customers in rural Wisconsin.**
3. **Telephone USA participated in the bidding process for the wireless assets that Verizon Wireless was required to divest following its acquisition of Alltel. I have reviewed the description in the Petition of the bidding process and USA Telephone's participation in that process, and that description is true and correct.**
4. **I also have reviewed the other factual material in the Petition. To the best of my knowledge and belief that information is true and correct.**

I declare under penalty of perjury that the foregoing is true and correct.

Telephone USA Investments, Inc.


By: Joseph A. Stroud, Chairman

Dated: August 10, 2009

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle of Dow Lohnes, PLLC do hereby certify that on this 10th day of August, 2009, copies of the foregoing Petition to Deny of Telephone USA Investments, Inc. were served upon the following:

To Federal Communications Commission as follows (via hand delivery):

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Stacy Ferraro
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
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To Office of the Chairman as follows:
The Honorable Julius Genachowski
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Washington, D.C. 20554

To the Office of the Chairman as follows:
Bruce Gottlieb
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Michael Copps as follows:
The Honorable Michael Copps
445 12th Street, S.W.
Washington, D.C. 20554

To the Office of Commissioner Michael Copps as follows:
Scott Deutchman
445 12th Street, S.W.
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To the Office of Commissioner Robert McDowell as follows:
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To the Office of Commissioner Robert McDowell as follows:
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**To the Office of Commissioner Mignon
Clyburn as follows:**

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**To the Office of Commissioner Meredith
Attwell Baker as follows:**

The Honorable Meredith Attwell Baker
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Washington, D.C. 20554

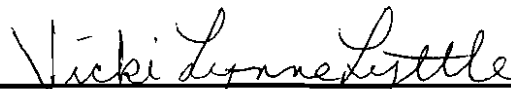
To the following via U.S. mail, first-class, postage prepaid

To Verizon Wireless as follows:

Nancy Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

To Atlantic Tele-Network, Inc. as follows:

Jonathan V. Cohen
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037



Signed: Vicki Lynne Lyttle

August 10, 2009

Date

Before the
Federal Communications Commission
Washington, DC

In the Matter of)
)
Atlantic Tele-Network, Inc.) WT Docket No. 09-119
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and)
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Verizon Wireless)
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Applications for Consent to Assignment of)
Licenses and Transfer of Control)

FILED/ACCEPTED
AUG 27 2009
Federal Communications Commission
Office of the Secretary

REPLY OF TELEPHONE USA INVESTMENTS, INC.

Telephone USA Investments, Inc. ("Telephone USA"), by its attorneys and in accordance with the Commission's July 9, 2009 *Public Notice*, hereby submits this reply to the joint opposition of Atlantic Tele-Network, Inc. ("ATNI") and Verizon Wireless (the "Joint Opposition") to Telephone USA's petition to deny (the "Petition") the applications in the above-referenced proceeding.¹ There is nothing in the Joint Opposition that refutes the central points of the Petition; indeed, Verizon Wireless and ATNI carefully sidestep the key issues raised by Telephone USA. Consequently, the Commission should deny these applications and require Verizon Wireless to afford independent small, minority- and women-owned businesses a realistic, fair and documented opportunity to purchase assets being divested to meet the conditions in the *Alltel Merger Order*.²

¹ See Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations, *Public Notice*, DA-09-1515 (2009).

² Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008) (the "Alltel Merger Order"), *reconsideration pending*.

This reply will focus on two issues. First, the public interest claims made by Verizon Wireless and ATNI are overstated at best, and are insufficient to support grant of their applications, particularly in the context of the other issues raised by those applications. Second, Verizon Wireless and ATNI fail to confront the central issue in the Petition, which is that the sale process did not address any of the specific concerns of independent small, minority- and women-owned businesses.

I. The Proposed Transaction's Public Interest Benefits Are Negligible.

The first third of the Joint Opposition is an effort to bolster the public interest showing in the applications. It adds almost nothing to the record, and does not support a conclusion that this transaction would provide any meaningful public interest benefits.

The key consideration in this case is that there is no cognizable public interest benefit from the sale of the markets that are the subject of the applications. The sale is an obligation resulting from the *Alltel Merger Order*, and any benefits from the divestiture of these markets already were accounted for in that order.³ Any claimed benefit from “partially fulfilling the divestiture obligations imposed by the Commission” or from “establish[ing] a fresh competitive presence” in the affected markets is a result of the *Alltel Merger Order*, not of the proposed transaction.⁴ Consequently, such benefits cannot be used to support a public interest showing in this proceeding.

When those supposed benefits are removed, there is almost nothing left. As Telephone USA demonstrated in the Petition, ATNI has no retail wireless experience in the United States.⁵

³ *Id.*, 23 FCC Red at 17515-16.

⁴ Joint Opposition at 3-4.

⁵ Petition at 6.

ATNI does not deny this, but instead says that it is committed to maintaining quality service.⁶ Maintaining the existing level of service is not a public interest benefit – it is the status quo. Moreover, a mere statement that a purchaser “intends to ‘hit the ground running’” is not sufficient to support a public interest finding.⁷ Given that the divestiture itself cannot support a public interest showing, this leaves Verizon Wireless and ATNI without any basis to claim meaningful public interest benefits.

II. Verizon Wireless Improperly Failed to Address the Commission’s Concerns About Diversity in the Wireless Marketplace.

As described in the Petition, the *Alltel Merger Order* plainly sets out the Commission’s conclusion that the public interest would be advanced if the divestiture process accounted appropriately for the disadvantages faced by independent small, minority- and women-owned businesses in obtaining access to the wireless marketplace.⁸ In that order, the Commission specifically noted that such issues would be part of its public interest analysis “when an application is filed seeking the Commission’s consent to the transfer or assignment of the Divestiture Assets.”⁹ The Petition demonstrated that Verizon Wireless ignored the Commission’s intent to facilitate participation by non-traditional bidders.¹⁰ In light of that fact, Verizon Wireless should be required to re-open the divestiture process and seek bids on terms that would accommodate independent small, minority- and women-owned bidders.

⁶ Joint Opposition at 7 & n. 16. Telephone USA notes that ATNI and Verizon Wireless no longer appear to be relying on the transition services agreement as a public interest benefit. *See* Petition at 6-7.

⁷ Joint Opposition at 7.

⁸ Petition at 5.

⁹ *Alltel Merger Order*, 23 FCC Rcd at 17518.

¹⁰ Petition at 5-6.

The Joint Opposition addresses this issue by creating a straw man, and arguing that the Commission's case law prohibits consideration of the question of whether there might be a better buyer than the one chosen by the seller.¹¹ But that is not what the Petition argues. Rather, the Petition demonstrates that the process used by Verizon Wireless was calculated to give the appearance of seeking to sell to an independent small, minority- or women-owned company without creating any actual opportunity for such a company to succeed. In other words, the Petition does not claim that there is some other, better buyer. Instead, it shows that Verizon Wireless deliberately chose to create a process that would ignore the Commission's admonition to give minority-owned bidders a full and fair opportunity to win the divested licenses.¹²

Given the Commission's specific statement that it would consider diversity issues when it reviewed the divestiture applications, there can be no doubt that considering those issues is appropriate now. Moreover, those issues have nothing to do with the specific buyers chosen by

¹¹ Joint Opposition at 12. This, of course, is not always true. In certain circumstances, the Commission's policies require it to consider whether a specific buyer is suitable. *See, e.g.*, 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Report and Order and Order on Reconsideration*, 23 FCC Rcd 2010, 2054 (2008) (requiring entities seeking waivers of the local television ownership rule to “demonstrate that there is no buyer outside the market willing to purchase the station at a reasonable price”).

¹² Petition at 5-7. The Joint Opposition cites the 1994 *McCaw/AT&T Order* to argue that the Commission has rejected arguments that a seller should demonstrate that a minority buyer was not available, but that decision was made in a vastly different factual context. In that case, there was no pre-existing language to support giving minority candidates a fair opportunity to purchase the systems being sold and no statement that diversity issues would be considered when divestiture applications were filed. Indeed, the *McCaw/AT&T Order* stands for the proposition that the Commission looks to previous orders to determine what actions a licensee is required to take when selling its systems, which is precisely what Telephone USA is asking the Commission to do here. *See Applications of Craig O. McCaw and American Telephone and Telegraph Company, Memorandum Opinion and Order*, 9 FCC Rcd 5836, 5917-18 (1994) (indicating that waivers of cut-off rules will be evaluated in light of the Commission's previously established criteria).

Verizon Wireless. Indeed, if Verizon Wireless could show that it used a process that gave non-traditional buyers a reasonable opportunity, the final choice of the buyer would be irrelevant.

However, the facts demonstrate otherwise. As shown in the Petition, Verizon Wireless tried to make it appear that it was helping minority bidders, but nothing that Verizon Wireless did actually addressed the specific concerns that affect minority bidders, and therefore the process did nothing to improve the chances that an independent small minority or female bidder would be successful.¹³ Every decision that mattered, from the types of bids that Verizon Wireless said it preferred to its unwillingness to negotiate directly with independent small, minority and female bidders to its ultimate choice of ATNI over an independent small, minority bidder that offered \$800 million more than ATNI, disadvantaged independent small minority and female buyers and effectively prevented Telephone USA or any other non-traditional bidder from having any chance of success. In reality, Verizon Wireless favored bidders that were not independent, small or minority- or women-owned – AT&T and ATNI – by accepting their bids even though they did not meet the stated criteria for bidding.¹⁴

Verizon Wireless's claims to the contrary amount to nothing. Even accepting the Joint Opposition at face value, Verizon Wireless admits that all it did was send bidding materials to "a large variety of prospective buyers"; include four potential minority bidders in a group of "over 20" companies that engaged in "more-detailed due diligence conversations"; and grant

¹³ See Petition at 5-6. Among other things, Verizon Wireless initially tried to bundle all of the markets into a single package; rejected a bid from Telephone USA for the entire package that was larger than the amount it ultimately agreed to accept for the divested assets; rejected efforts to negotiate individually with minority bidders; and insisted that all bidders have pre-arranged financing (although, in fact, ATNI's financing is contingent on agreement from its lenders). *Id.*

¹⁴ Specifically, Verizon Wireless sold only a portion of the divestiture markets to AT&T, despite its stated preference for selling all of the markets to a single bidder, and agreed to sell the remaining markets to ATNI, even though ATNI required consent from its lenders and therefore did not have assured financing.

procedural relief, such as relaxed deadlines, to some minority bidders.¹⁵ Of course, none of these actions addressed the specific concerns that affect independent small minority- and women-controlled businesses, such as the availability of financing. Instead, all of Verizon Wireless's actions were cosmetic, designed to make it appear that non-traditional bidders were given a chance.

Indeed, Verizon Wireless says nearly as much in its final justification for shutting out non-traditional companies: It was compelled to do so to address “government-imposed constraints.”¹⁶ While blaming the Commission and the Justice Department may be convenient, there is no basis for this claim. First, Verizon Wireless chose AT&T as one of the buyers. AT&T was the one potential buyer most likely to meet with objections at the Commission and before the Department of Justice. Second, while Verizon Wireless says that this consideration led it to “look beyond just the dollar amount of the bid in selecting a buyer,” that is an implausible explanation for accepting a bid that was 80 percent less than that of a competing bidder.¹⁷ Moreover, given the Commission's expressed desire that Verizon Wireless take actions to assist independent small, minority- and women-owned bidders, it was Verizon Wireless's responsibility to meet all of the Commission's goals, not just the ones Verizon Wireless wanted to meet. Consequently, the evidence demonstrates that grant of these applications would not serve the public interest.

¹⁵ Joint Opposition at 15-18. It is noteworthy that Verizon Wireless does not say that the only parties that received procedural relief were minority bidders.

¹⁶ Joint Opposition at 18-19.

¹⁷ *Id.* at 19.

III. The Applications Should Be Designated for Hearing.

Verizon Wireless and ATNI bear the burden of demonstrating to the Commission that grant of their applications is in the public interest. If the Commission cannot reach that conclusion on the basis of the applications, and if there is a substantial and material question of fact, the Commission must designate the applications for hearing.¹⁸ The evidence shows that Verizon Wireless and ATNI are far from meeting their burden; indeed, the record reveals no basis to conclude that there are any real public interest benefits, and the public interest harms that accrue from Verizon Wireless's decision to ignore the Commission's intent that independent, small minority- and women-owned businesses be given a fair opportunity to acquire the divested licenses are substantial.

As described in the Petition, this evidence leads to the same conclusions that the Commission reached in the *EchoStar/DirectTV Order*: The public interest benefits are inadequately supported or not related to the transaction, and are counterbalanced by potential public interest harms.¹⁹ In that case, the Commission determined that the applications had to be set for hearing. Here, the evidence in support of the applications is even weaker, and the potential harms are large. If the applications are not set for hearing, they must be denied.

¹⁸ Petition at 8-10.

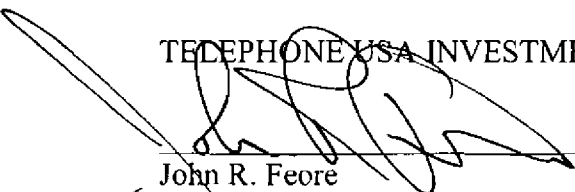
¹⁹ *Id.* at 10, *citing* Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee), *Hearing Designation Order*, 17 FCC Rcd 20559, 20664 (2002).

IV. Conclusion

For all these reasons, the Commission should deny the applications for the assignment of licenses and transfer of control from Verizon Wireless to ATNI or set them for hearing to determine whether the facts are sufficient to support grant of the applications.

Respectfully submitted,

TELEPHONE USA INVESTMENTS, INC.



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August 27, 2009

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle of Dow Lohnes PLLC do hereby certify that on this 27th day of August, 2009, copies of the foregoing Reply of Telephone USA Investments, Inc. were served upon the following:

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I, Tammi Foxwell, do hereby certify that on this 25th day of January, 2010, copies of the foregoing written *ex parte* communication were served as follows:

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